



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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Tallahassee, Florida 32399-1100
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DATE	COMM	ACTION
3/28/17	SM	Favorable
4/5/17	JU	Fav/CS
4/17/17	CA	Fav/CS
	RC	

March 28, 2017

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/CS/SB 304** – Community Affairs Committee; Judiciary Committee
and Senator Perry Thurston

HB 6531 – Representative Brad Drake
Relief of Dustin Reinhardt by the Palm Beach County School Board

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$4.7 MILLION, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN DUSTIN REINHARDT, THE CLAIMANT, AND THE PALM BEACH COUNTY SCHOOL BOARD. THE BILL COMPENSATES THE CLAIMANT FOR INJURIES HE RECEIVED WHEN A TIRE EXPLODED IN HIS AUTO SHOP CLASS.

FINDINGS OF FACT:

This claim arises out of an accident that took place on September 4, 2013 in the auto shop of the Seminole Ridge Community High School in Loxahatchee, Florida. At the time of the accident, Dustin Reinhardt was 16 years old. He was taking the auto shop as a class for the third year in a row, taught by shop teacher, Raymond Craig.

On the day of the incident, a student in the auto shop class had rims to be worked on. That student and Dustin drilled holes in the truck rims, placed rubber inner tubes inside the tires, and assembled the rubber inner tube and tire on the modified rim. Mr. Craig, according to a statement he made to

a law enforcement officer investigating the incident, knew that the two students had modified the rims in this way.

After Dustin and the other student finished modifying the tires, Dustin began to fill one with air. During that time, Mr. Craig stated that he walked by Dustin and told him to sit the tire upright and not stand directly in front of the tire while filling it. A few seconds later, the tire exploded, knocking Dustin unconscious and injuring his head and brain.

A tire cage is a piece of safety equipment. Inflating a tire that has first been placed inside a tire cage provides stability during the process. However, at the time of the incident, the auto shop did not have a tire cage large enough to accommodate the large truck tire.

After the accident, a medical evacuation team airlifted Dustin to St. Mary's Hospital in West Palm Beach where doctors placed him in a medically-induced coma for a month. Doctors initially told Dustin's father, Scott Reinhardt, that they did not know if Dustin would survive. When doctors brought Dustin out of the coma and sat him up, spinal fluid leaked through his nose, necessitating placement of a shunt in his brain. Dustin underwent multiple additional surgeries, including facial and skull reconstruction. Even after the surgeries, Dustin has been left with a permanent loss of vision in his right eye, considerable facial scarring, short-term memory loss, judgment deficiencies, and severe traumatic brain injury.

On October 9, 2013, the hospital transferred Dustin to a physical rehabilitation facility at the hospital.

On October 24, 2013, the hospital discharged Dustin and he returned home to live with his father, Scott Reinhardt, and Dustin's stepmother, Joann Reinhardt. Upon returning home, Dustin began to display emotional outbursts and significant aggressive behaviors. In addition to the acting out, Dustin needed near-constant supervision to remain safe.

Because of this, Scott Reinhardt and Dustin's doctors decided to place Dustin in a supervised, residential setting. Dustin's family agreed to the placement recommended by doctors, at the Florida Institute for Neurologic Rehabilitation (FINR). Dustin entered the FINR on a residential basis on March 14, 2014. In the area of vocational development, Dustin worked his way up from an hour a day of dusting at the facility, to

going to an off-site landscape nursery and doing general grounds maintenance under supervision for several hours a day.

While at FINR, another brain-injured patient set Dustin on fire. Dustin suffered third-degree burns, necessitating additional surgery.

Dustin stayed at FINR until December 2016, at which time his father had him transported to Neuro International, a facility providing assisted living services. At the facility, the staff check on Dustin every 30 minutes during the day and every 60 minutes at night. When Dustin goes out into the community, he is under constant visual supervision.

Dustin has worked hard to overcome his emotional outbursts. With the assistance of educators at the facility, he also has been able to get his high school diploma. Although Dustin has progressed in various areas while in the care of these institutions, his medical providers and his father agree that Dustin is unable to advance to living independently. For example, medical doctors estimate that Dustin functions developmentally at the equivalent of a 10 to 12 year old. Therefore, a continued stay in a supervised setting such as Neuro International is recommended.

Notably, Dustin was born a triplet and the other triplets are in careers in the armed services. At the time of the accident, Dustin was enrolled in Army Junior ROTC. Additionally, he intended to pursue a career as a long-distance truck driver or truck mechanic.

Dustin's stepmother, Joanna Reinhardt, and his father, Scott Reinhardt, are Dustin's legal guardians.

FUTURE SERVICES REPORT: Both plaintiff and defense experts prepared a Life Care Plan for Dustin. Dr. Craig Lichtblau, a psychiatrist, and Dr. David Williams, an economist for the plaintiff, estimate the cost of future care and loss of earnings at \$15 million.

Dr. Alan Raphael, for the defense, estimates future care and loss of earnings at \$4,348,675. Dr. Raphael based this total on a review of Dr. Lichtblau's report and consultations with Dr. Ronald Tolchin, an examining psychiatrist.

Plaintiff Estimate: The first table provides a summary of economic damages, as estimated by Dr. Williams. As of the date of the report, June 24, 2015, Dr. Williams estimated Dustin’s life expectancy at an additional 58.2 years. Medical expenses that Dustin is expected to incur include medical care; diagnostic tests; surgical procedures related to the artificial eye; therapeutic evaluations, consisting of physical therapy, occupational therapy, speech therapy, and neuropsychometric testing; outpatient therapy for physical therapy, occupational therapy, and speech therapy; medication; support care; and transportation, including costs of a cell phone. Dr. Williams identifies other possible medical complications, but does not calculate them for purposes of the anticipated costs. These complications could present as pulmonary, urological, renal seizure, hydrocephalus, and other possible issues.

Future Medical Expenses	\$12,348,654
Loss of Future Earning Capacity	\$ 1,800,000
Gross Past Medical Expenses	\$ 1,377,129
Total Economic Damages	\$15,525,783

Defense Estimate: The second table assumes a life expectancy of an additional 59.4 years, as of April 24, 2015. The anticipated medical expenses include medical care, therapy, medication, diagnostic tests, future surgery and hospitalization for a shunt revision in the brain and an artificial eye replacement, medical equipment, and costs of living at an assisted living facility. Dr. Raphael recognizes, but does not include estimates for possible expenses relating to the services of a professional guardian and plastic surgery for scar revisions. Additionally, the defense estimate deducts from future earnings typical pay as a landscape technician.

Future Medical Expenses and Care	\$3,194,425
Loss of Future Earning Capacity	\$891,000
Driver (If necessary to provide transport to a part-time job)	\$263, 250
Total Economic Damages	\$4,348,675

LITIGATION HISTORY:

On February 25, 2015, Dustin Reinhardt and Scott Reinhardt filed a Complaint for Damages against the School District of Palm Beach County and USAA General Indemnity Company in the Palm Beach County Circuit Court. The complaint alleged that the School District of Palm Beach County negligently failed to supervise and/or adequately protect Dustin Reinhardt. Due to the negligence of the School District of Palm Beach County, the complaint alleges that Dustin suffered significant physical, mental, and emotional injuries. Additionally, the complaint alleged that Scott Reinhardt incurred medical expenses needed to treat his son's injuries and the loss of his son's services.

After the plaintiffs filed the complaint, the parties engaged in discovery, exchanging interrogatories and taking depositions. Eventually, the Reinhardts and the School District of Palm Beach County entered into a Release and Settlement Agreement. Under its terms, the School District agreed to pay \$300,000 up front, \$100,000 of which the School District paid to Scott Reinhardt individually and \$200,000 of which the School District paid to Scott Reinhardt in his capacity as guardian for Dustin. The School District disbursed the \$300,000 within 20 days after the court approved the settlement agreement.

The court issued its order approving the settlement agreement on February 1, 2017.

The agreement acknowledges that the plaintiff has already received, and will continue to receive the benefit of payment for Dustin's full expenses, including medical, room and board, supervision and therapy at the FINR. These payments, which amount to approximately \$350 a day, or \$124,600 per year, have already been made through the School Board's Omaha Custodial Care Insurance Policy. The payouts will continue until September 2023, based on a ten-year total allowable payout.

In addition to the initial amount payment of \$300,000, the agreement provided for the plaintiffs to receive a total of \$4.7 million through the claim bill process. Of this total, \$1,700,000 will be payable as a lump sum within 30 days after the claim bill is enacted, and \$3,000,000 payable as a \$1 million annual annuity, starting September 2023 or at the time of cessation of the payouts from the Custodial Care Insurance Policy.

CLAIMANT'S POSITION:

To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Mr. Craig owed a duty to Dustin to provide a safe work environment in the auto shop class and to properly supervise the students. Mr. Craig breached that duty by allowing Dustin to put air in a large tire that had been modified, an extremely dangerous activity, without the benefit of a tire cage. In instructing Dustin to sit the tire upright, Mr. Craig knew or should have known that the tire had a propensity to explode. The explosion of the tire caused irreparable and considerable injury to Dustin.

As a result of the accident, Dustin incurred and continues to incur economic and non-economic damages. Dustin permanently lost the vision in his right eye and has had numerous surgeries. He suffers from short-term memory loss and has severe traumatic brain injury, interfering with his ability to exercise sound judgment and engage in other executive level functioning. Dustin requires lifetime medical care and treatment, including future surgery and various therapies, and room and board at an assisted living facility. Dustin is unable to pursue his dream of serving in the military or otherwise pursue his intended vocation as a long-haul trucker or as a truck mechanic. Additionally, Dustin has repeatedly expressed the desire to live on his own, support himself in the future, drive, marry, have children, and own his own home. Dustin may well not realize these desires.

RESPONDENT'S POSITION:

The School Board of Palm Beach County agrees not to contest the claim bill.

CONCLUSIONS OF LAW:

Section 768.28, F.S., governs this matter. This statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages which a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the

Legislature. Therefore, Dustin will not receive the full benefit of the settlement agreement with the School Board of Palm Beach County unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Although school boards are not strictly liable for the safety of students, well-settled law provides that a school board has a duty to properly supervise students entrusted to the care of the school.¹ In a case in which a plaintiff alleges a lack of supervision, a teacher's duty of care is defined as reasonable, prudent, and ordinary care, or the care that a person of ordinary prudence responsible for those duties would exercise given the same circumstances.² Providing inadequate supervision is a breach of that duty.³

The tire that Dustin worked on the day of the incident was not typical for the tires brought to the auto shop class. Although the plaintiff and the defense describe the tire differently, the defense concedes that the tire was a large buggy tire, incapable of placement inside a tire cage for safety while being filled with air. Mr. Craig knew that Dustin was putting air in the tire as he asked him to sit the tire upright. However, Mr. Craig kept walking after issuing the instruction, thereby providing inadequate supervision.

Mr. Craig was employed by the School Board of Palm Beach County. The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

Due to Mr. Craig's breach of his duty of care, he caused the accident and Dustin's damages. The claimant has demonstrated significant economic damages. Dustin's medical costs are considerable and ongoing. Due to his

¹ *Benton v. School Board*, 386 So. 2d 831, 834 (Fla. 4th DCA 1980); *Comuntzis v. Pinellas County School Board*, 508 So. 2d 750, 751 (Fla. 2nd DCA 1987).

² *La Petite Academy v. Nassef*, 674 So. 2d 181, 182 (Fla. 2d DCA 1996).

³ *Doe v. Escambia County School Board*, 599 So. 2d 226 (Fla. 1st DCA 1992).

inability to live on his own, he will likely require lifetime care in a supervised setting. Dustin will never be able to pursue his chosen avocation or sustain himself.

Should this case have proceeded to trial, Dustin appears by all accounts to have presented as a sympathetic plaintiff. Just 16 when the incident happened, he will never have the opportunity to live the life accessible to others. He has also demonstrated a strong commitment to making progress towards recovery.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

COLLATERAL SOURCES:

The plaintiff has entered into a settlement agreement with various other defendant(s). The total settlement amount from sources unrelated to the claim bill, \$1,373,000, comes from:

Source	Amount
Homeowner’s insurance policy of the owner of the tire	\$303,000
USAA uninsured motorist policy for Scott Reinhardt	\$50,000
Teacher’s union insurance policy of Raymond Craig, auto shop teacher	\$1,000,000
Homeowner’s policy of Raymond Craig, auto shop teacher	\$20,000
Total	\$1,373,000

FISCAL IMPACT:

The School Board of Palm Beach County is self-insured for personal injury liability claims. If approved by the Legislature, the \$4.7 million will be paid from the School Board of Palm Beach County’s Workers’ Compensation and Liability Claims Internal Service Fund. The School Board represents that they have reserved the amount necessary to pay this claim.

ATTORNEYS FEES:

The total amount of money requested in the claim bill is \$4.7 million. Should the claim bill become law, and in the amount requested, the attorney’s fees, based on a 20 percent recovery, will be \$940,000. Lobbyist fees, based on a 5 percent recovery, will be \$235,000.

The plaintiff and defendant have already entered into a settlement agreement for the \$300,000 permitted by law. Of this, Scott Reinhardt received \$100,000 individually, and \$200,000 as the guardian of Dustin Reinhardt. Attorney's fees for this part of the agreement are \$25,000 and \$50,000, respectively. These attorney's fees represent 25 percent of the total recovery.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 304 (2017) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Secretary of the Senate

CS/CS by Community Affairs:

Adds the claim of CS/SB 24 to CS/SB 304 with some minor changes. The new amount to be paid to Altavious Carter by the Palm Beach County School Board is \$790,000, as reflected in the settlement agreement, and specifies the payment should be made no later than 20 days after the effective date. Below is the special master's report for CS/SB 24.



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SPECIAL MASTER ON CLAIM BILLS**

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302 Senate Office Building

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DATE	COMM	ACTION
2/28/17	SM	Fav/1 amendment
3/08/17	JU	Fav/CS
	CA	

	RC	
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February 28, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 24** – Judiciary Committee and Senator Anitere Flores
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$1,040,864.42 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

CURRENT STATUS:

On February 3, 2011, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 26 (2012). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Jason Hand. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report, including the recommendation in the "Other Issues" section

of the original report, which recommended that the claim bill be amended to add the August 4, 2010, Final Cost Judgment costs of \$50,394.52 (in response to Plaintiff's Motion to Tax Costs).

However, it appears the claim bill inadvertently identifies the amount of the Final Cost Judgment as \$46,830.11; therefore, I recommend amending the claim bill to include the correct amount of the Final Cost Judgment (\$50,394.52). This change would raise the total amount of the claim bill from \$1,040,864.41 to \$1,044,428.82. Based on the foregoing, I recommend that SB 24 be recommended favorably, as amended.

Additionally, and except for the inclusion of the Final Cost Judgment, the prior claim bills, SB 26 (2012)(died in Special Master on Claims Bills), SB 30 (2013)(died in Judiciary Committee), SB 38 (2014)(withdrawn), and SB 72 (2015)(died in Appropriations Committee) and SB 50 (2016)(died in Appropriations Committee) are effectively identical to the claim bill filed for the 2016 Legislative Session.

Respectfully submitted,
Jason Hand
Senate Special Master
cc: Secretary of the Senate

CS by Judiciary:

The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include limits on the amount of lobbying fees, costs, and similar expenses that may be paid from the proceeds of the bill.



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404 South Monroe Street
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DATE	COMM	ACTION
12/02/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Altavious Carter

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM FOR \$944,034.30 BASED ON A JURY AWARD FOR ALTAVIOUS CARTER (CLAIMANT) AGAINST THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, TO COMPENSATE CLAIMANT FOR DAMAGES HE SUSTAINED WHEN A SCHOOL BUS CRASHED INTO THE REAR END OF A VAN IN WHICH HE WAS A PASSENGER.

FINDINGS OF FACT:

Following a four-day trial in the Palm Beach County Circuit Court a jury found that Claimant had sustained a permanent injury in an accident that occurred December 15, 2005, and awarded him the following damages with the amount of the award in parentheses: past medical expenses (\$96,475.64); future medical expenses (\$175,892.00); past pain and suffering (\$478,333.33); and future pain and suffering (\$343,333.33). The award of damages totaled \$1,094,034.30. The verdict was dated February 12, 2010.

On February 25, 2010, Judge Thomas H. Barkdull entered final judgment for Claimant as follows: "Pursuant to the Jury Verdict rendered in this action, IT IS ADJUDGED: That [Claimant] recover from [the School Board] the sum of [\$1,094,034.30] that shall bear interest annually at the

statutory rate and for which let execution issue for the first One Hundred Thousand Dollars (\$100,000.00) of this judgment and that portion of the judgment that exceeds [\$100,000] may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature further [sic] to 768.28."

The court retained jurisdiction to determine taxable costs as well as to determine set offs, if any. On August 4, 2010, Judge Barkdull entered a "Final Cost Judgment" in the amount of \$50,394.52 with interest at the statutory rate with the following provision: "but for which execution shall not issue, but this judgment may be reported to the legislature, but may not be paid in part or in whole except by further act of the legislature pursuant to 768.28."

On April 14, 2010, the School Board paid to Claimant the sum of \$100,000.00 in partial satisfaction of the Final Judgment.

At the trial and in this claims proceeding, the School Board stipulated that it is liable for Claimant's damages.

In this claims proceeding, the School Board does not contest the award for Claimant's past medical expenses or the award for Claimant's past pain and suffering. The School Board asserts that the awards for future medical expenses and future pain and suffering are excessive.

Claimant, a male, born September 7, 1991, is a basketball player who currently plays for Santa Fe College. On December 15, 2005, Claimant was being transported from basketball practice to his home in a van being driven by Vincent Merriweather, a volunteer coach for Claimant's team. Mr. Merriweather served as a mentor to Claimant.

On that date Mr. Merriweather's van was stopped at a red light in a westbound lane at the intersection of Forest Hills Boulevard and Olympia Boulevard in Palm Beach County when a school bus owned and operated by the Palm Beach County School District rear-ended the van. It was estimated that the bus was traveling in excess of 45 MPH when it hit the van, and there was no credible evidence that the driver applied his brakes at any point before the accident.

The negligence of the school bus driver was the cause of the accident and was the proximate cause of the damages suffered by Claimant.

Mr. Merriweather was also injured in the accident and suffered damages in excess of \$100,000.00. Mr. Merriweather was granted compensation for his excess damages by Chapter 2009-247, Laws of Florida.

Claimant was wearing a seat belt at the time of the crash. Claimant's seat failed as a result to the force of the impact, and he was thrown into the back of the van and briefly lost consciousness. When he regained consciousness, he began yelling for Mr. Merriweather, who was unable to respond. Claimant was able to exit the van, but he immediately experienced pain in his neck. An unidentified person assisted Claimant by helping him to lie down on the pavement. A person identified as a school nurse told Claimant to be still until emergency services arrived and advised him to stay still.

Emergency responders arrived on the scene in a timely fashion, stabilized Claimant's head and neck, and transported him to Wellington Regional Hospital.

Diagnostic testing at Wellington Regional Hospital reflected that Claimant had suffered a cervical fracture in the region of the neck referred to as C6-C7. The cervical area of the neck, consisting of seven vertebrae, is immediately above the thoracic region. The designation C6-7 (or C6-C7) indicates the area where the sixth cervical vertebrae and the seventh cervical vertebrae are located. Between the two vertebrae is a disc, which serves several purposes, including acting as a shock absorber between the two vertebrae. The spinal cord runs through the vertebrae of the cervical and thoracic regions.

Due to the severity of the injury, which included a risk of paralysis, Wellington Regional Hospital transferred Claimant to the trauma center at St. Mary's Hospital.

At St. Mary's, Claimant was placed in cervical traction consisting of immobilizing hardware being screwed into his skull and being strapped to a bed where he was unable to move.

Dr. Bret Baynham, a certified pediatric orthopedic surgeon, performed the following procedures on Claimant: Open Reduction C6-7 Fracture-Dislocation; Anterior Cervical Discectomy C6-7; Anterior Cervical Decompression, C6-7; Anterior Cervical Interbody Fusion Device C6-7; and Anterior Cervical Fusion C6-7.

In layman's terms, Dr. Baynham fused Claimant's C6-C7 vertebrae. He removed the disc between C6-C7. In the area from which the disc had been removed, he inserted a hollowed metallic dowel, referred to as a cage, filled with particles of bones that were designed to allow the two vertebrae to eventually grow together. He then affixed a metal plate to stabilize C6-C7 using special bone screws. The metal plate is intended to be permanent.

Dr. Baynham provided Claimant excellent care.

Post-surgery, Claimant underwent a grueling rehabilitation. Claimant worked hard during rehabilitation and cooperated fully with his therapists and other treatment providers.

Dr. Baynham continued to follow Claimant's recovery post-surgery. On July 27, 2006, Dr. Baynham found Claimant to be pain free and gradually returning to normal activities. Dr. Baynham's office notes reflect the following recommendation: "At this point we are going to allow [Claimant] to return to full activity. Based on his clinical and radiographic findings he is found to have a stable healed injury without any evidence of any residual instability or neurologic compromise. If he should have any problems as we move forward he is to refrain from activity and contact us immediately. This would include pain recurrence or any signs or symptoms associated with spinal cord or nerve root irritation. Otherwise if he remains well we would like to have him follow up in six months for re-evaluation including radiographs if indicated."

After July 27, 2006, Claimant resumed playing basketball and became a star high school player and a full-scholarship player at Santa Fe College in Gainesville. Claimant has been cleared to play basketball without any medical restrictions attributable to the injuries he received in the 2005 accident.

At present, Claimant experiences periodic neck pain.

Adjacent disc disease (also referred to in the record as "adjacent segment disease") can be a consequence of fusing two vertebrae. When two discs are fused, greater mechanical loading or stress is placed on the vertebrae above or below the fused discs, which may or may not cause disc degeneration and require further intervention. While adjacent disc disease may be discernable by a MRI relatively soon after the fusion, symptoms from the disease typically come later in life, but may not come at all.

Claimant was seen by Dr. Baynham on follow-up on November 27, 2007. His impression was that Claimant was stable with no residual neurologic impairment, no pain in the neck, and no functional loss of motion. His recommendation was that "Based on the clinical and radiographic findings [Claimant] is found to have a stable healed injury without evidence of any residual instability or neurologic compromise. No further treatment is indicated at this time. No restrictions to athletic participation. Follow up prn."

Claimant experienced neck and back pain in 2009 and returned to Dr. Baynham in January and June of that year. In June 2009, Dr. Baynham ordered an MRI for Claimant. Dr. Baynham observed changes in C7-T1 (T1 is the first thoracic vertebrae). Dr. Baynham testified that the changes could be the delayed manifestation of injuries from the initial injury. He also testified that the changes could be the result of adjacent segment disease phenomenon. Dr. Baynham testified that the changes "are certainly consistent with not only the zone of initial injury, but also some additional changes that are probably the result of this adjacent segment disease phenomenon, as best we know."

Dr. Baynham further testified that "based on his young age and his life expectancy and based on the current state of understanding of this phenomenon of the adjacent level disc disease, I think it is probable, most probable that he will continue to experience changes there. And it will, in time, probably rise to the level of becoming clinically significant, meaning a source of pain and potentially a source requiring additional treatment."

Dr. Craig H. Lichtblau is a physiatrist who specializes in physical medicine, rehabilitation, and evaluation. Dr. Lichtblau was retained by Claimant to conduct a Comprehensive Rehabilitation Evaluation of Claimant, give an impairment rating of Claimant, and provide a Continuation of Care plan for Claimant

Dr. Lichtblau assigned Claimant a 4 percent permanent partial impairment of the whole person.

Dr. Lichtblau's Continuation of Care plan included the services that Dr. Lichtblau believed Claimant would or may need in the future. Dr. Lichtblau's plan included future epidural steroid injections and surgical intervention. Dr. Baynham testified that including epidural steroid injections is reasonable. Dr. Baynham also testified that Claimant is at an increased risk of future surgical intervention.

Bernard E. Pettingill, Jr., Ph.D. is a consulting economist who, on February 12, 2009, prepared an analysis entitled "The Present Value Analysis of the Future Medical Care Costs of [Claimant]". At the time of the analysis, Claimant's life expectancy was projected to be 53.6 years beyond the date of the report.

Claimant represented in his "Summary of Case" that the parties stipulated that Claimant's past medical expenses for purposes of trial were \$96,475.64.

Dr. Pettingill used Dr. Lichtblau's Continuation of Care plan to compute the present value of Claimant's "Total Economic Loss, Period II, Future Loss, After Trial Date". Claimant presented evidence to the jury that the correct total economic loss for the post-trial period, as computed by Dr. Pettingill, was \$363,487.00.

Claimant was examined by Dr. Jordan Grabel, a neurological surgeon, on July 17, 2008, at the request of the School Board. Dr. Grabel reviewed Claimant's medical records and took histories from Claimant and Claimant's mother. Dr. Grabel found that Claimant's surgery had healed and that there were no other abnormalities that could be associated with the accident. Dr. Grabel opined that there was a 50-50

chance that the onset of adjacent segment disease will be discernable by X-ray in future years. He further opined that there is no way to determine whether Claimant will become symptomatic or need future surgical treatment. Dr. Grabel was of the opinion that the Continuation of Care plan prepared by Dr. Lichtblau included non-invasive follow-up treatment that was unnecessary.

The School Board did not have a consulting economist estimate the present value of Claimant's future economic loss based on the services Dr. Grabel believed Claimant would need.

Dr. Mark Rubenstein conducted a compulsory medical examination of Claimant on August 11, 2008. Dr. Rubenstein's evaluation included a physical examination and a review of Claimant's medical records. Dr. Rubenstein's report reflects his opinion that Claimant's future medical care will be limited to physician visits on an as-needed basis and that Claimant will require future MRI studies and X-rays. Although he acknowledged the possibility of adjacent disc disease, he did not believe that intervention was medically probable. Dr. Rubenstein's report reflects the opinion that Claimant's future pain management will be limited to the use of anti-inflammatory medications.

In its position statement, the School Board represents that Dr. Rubenstein is a physiatrist retained by the School Board and that he believed that Claimant's future care not including surgery for adjacent segment disease would be approximately \$25,000.00. The undersigned did not find that figure in Dr. Rubenstein's report.

CLAIMANT'S POSITION:

1. The negligence of the school bus driver was the sole and proximate cause of the injuries and damages sustained by Claimant.
2. Claimant's future damages are not speculative, and the jury's verdict is supported by the evidence.

SCHOOL BOARD'S POSITION:

1. School Board stipulated that it is liable for Claimant's damages.
2. School Board does not dispute the jury award for past medical expenses or for past pain and suffering.

3. School Board asserts that Claimant has healed and has become a star basketball player.

4. School Board contends that awards for future medical expenses and future pain and suffering are excessive and speculative.

5. School Board argues that \$25,000.00 would suffice for future medical expenses and that \$50,000.00 would suffice for future pain and suffering.

6. School Board is self-insured and is experiencing a bleak fiscal year with expected shortfalls of over \$54,000,000.00.

CONCLUSIONS OF LAW:

The bus driver had a duty to exercise reasonable care in the operation of the bus. See generally s. 316.183(1), Fla. Stat. He breached this duty by crashing into the back of Mr. Merriweather's stopped van. See Eppler v. Tarmac America, Inc., 752 So. 2d 592 (Fla. 2000) (rear driver is presumed to be negligent in rear-end collision case absent evidence of a sudden and unexpected stop by the front driver).

The school bus driver was an employee of the School Board acting within the course and scope of his employment at the time of the accident. As a result, the driver's negligence is attributable to the School Board.

Consistent with the School Board's stipulation as to its liability, it is concluded that the bus driver's negligence was the sole and proximate cause of the injuries and damages sustained by Claimant, and that the driver's negligence is attributable to the School Board.

The jury based its verdict on competent, substantial evidence.

LEGISLATIVE HISTORY:

This is the second year that this claim has been presented to the Legislature.

ATTORNEYS FEES:

Claimant's attorney filed an affidavit stating that attorney's fees will be capped at 25 percent in accordance with s. 768.28(8), Florida Statutes. Lobbyist fees are incorporated into the attorney's fees cap.

The Legislature is free to limit those amounts as it sees fit. See Gamble v. Wells, 450 So. 2d 850 (Fla. 1984); Noel v. Schlesinger, 984 So. 2d 1265 (Fla. 4th DCA 2008). The bill provides that the total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

FISCAL IMPACT:

The School Board is self-insured and has no liability insurance applicable to this claim. The School Board expects to face a substantial budgetary shortfall and the passage of this claim bill will add to its budgetary difficulties.

OTHER ISSUES:

The bill, as filed, does not include the sum of \$50,394.52, which is the amount of the "Final Cost Judgment" entered by Judge Barkdull on August 4, 2010. The bill should be amended to add costs in the sum of \$50,394.52, so that the total amount of the award will be increased from the sum of \$994,034.30 to the sum of \$1,044,428.82.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that Senate Bill 26 be reported FAVORABLY, as amended.

Respectfully submitted,



Claude B. Arrington
Senate Special Master

cc: Senator Ellyn Setnor Bogdanoff
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

CS by Judiciary:

This committee substitute includes minor corrections to the facts alleged in the whereas clauses of the claim bill. More significantly, the committee substitute provides for the payments required under the claim bill to be used to fund a special needs trust for the benefit of the claimant. The committee substitute also identifies specific amounts that may be paid from the claim bill for attorney fees and lobbying fees.